

## A BILL TO BE ENTITLED

## AN ACT

To amend Chapter 71 of Title 36 of the Official Code of Georgia Annotated, relating to the "Georgia Development Impact Fee Act," so as to change definitions; to increase community participation in development impact fee advisory committees; to provide for the expenditure of impact fees; to provide a maximum amount of impact fees which may be imposed with respect to the construction of a new single-family residence; to correct cross-references; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Chapter 71 of Title 36 of the Official Code of Georgia Annotated, relating to the "Georgia Development Impact Fee Act," is amended by revising paragraphs (10.1) through (19) of Code Section 36-71-2, relating to definitions, and inserting in lieu thereof new paragraphs (11) through (20) as follows:

~~"(10.1)~~(11) 'Governmental entity' means any water authority, water and sewer authority, or water or waste-water authority created by or pursuant to an Act of the General Assembly of Georgia.

~~(11)~~(12) 'Level of service' means a measure of the relationship between service capacity and service demand for public facilities in terms of demand to capacity ratios, ~~or~~ the comfort and convenience of use or service of public facilities, ~~or~~ both.

~~(12)~~(13) 'Present value' means the current value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.

~~(13)~~(14) 'Project' means a particular development on an identified parcel of land.

~~(14)~~(15) 'Project improvements' means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether

an improvement is a project improvement or system improvement and the physical location of the improvement on site or off site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities approved by the governing body of the municipality or county shall be considered a project improvement.

~~(15)~~(16) 'Proportionate share' means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project within the defined service area.

~~(16)~~(17) 'Public facilities' means:

- (A) Water supply production, treatment, and distribution facilities;
- (B) Waste-water collection, treatment, and disposal facilities;
- (C) Roads, streets, and bridges, including rights of way, traffic signals, landscaping, and any local components of state or federal highways;
- (D) Storm-water collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;
- (E) Parks, open space, and recreation areas and related facilities;
- (F) Public safety facilities, including police, fire, emergency medical, and rescue facilities; and
- (G) Libraries and related facilities.

~~(17)~~(18) 'Service area' means a geographic area defined by a municipality, county, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both.

~~(18)~~(19) 'System improvement costs' means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvement element, and administrative costs, provided that such administrative costs shall not exceed 3 percent of the total amount of the costs. Projected interest charges and other finance costs may be included if the impact fees are

to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the municipality or county to finance the capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

~~(19)~~(20) 'System improvements' means capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to 'project improvements.'

## SECTION 2.

Said chapter is further amended by revising subsection (d) of Code Section 36-71-4, relating to calculation of fees, and inserting in lieu thereof new subsections (d) and (s) as follows:

"(d) A municipal or county development impact fee ordinance shall provide that development impact fees shall be collected not earlier in the development process than the issuance of a building permit authorizing construction of a building or structure; provided, however, that development impact fees for public facilities described in subparagraph (D) of paragraph ~~(16)~~(17) of Code Section 36-71-2 may be collected at the time of a development approval that authorizes site construction or improvement which requires public facilities described in subparagraph (D) of paragraph ~~(18)~~(17) of Code Section 36-71-2."

"(s) The total of all impact fees imposed with respect to the construction of a new single-family residence constructed for sale shall not exceed \$10,000.00 or 2 percent of the sales price, whichever is less. The amount of the impact fees shall be determined as of the date of the issuance of a certificate of occupancy for the residence. Where a single-family residence is constructed by the owner for occupancy by the owner, the total of all impact fees imposed with respect to the construction of the residence shall not exceed \$10,000.00 or 2 percent of the cost of the residence to the owner, including the costs of the land and construction paid by the owner. The amount of the impact fees shall be determined as of the date of the issuance of a certificate of occupancy for the residence."

## SECTION 3.

Said chapter is further amended by revising subsection (b) of Code Section 36-71-5, relating to hearings on proposed fee ordinances, as follows:

"(b) Such committee shall be composed of not less than five nor more than ten members appointed by the governing authority of the municipality or county and at least ~~40~~ 50 percent of the membership shall be representatives from the development, building, or real estate industries. An existing planning commission or other existing committee that meets these requirements may serve as the Development Impact Fee Advisory Committee."

**SECTION 4.**

Said chapter is further amended by revising Code Section 36-71-8, relating to deposit and expenditure of fees and an annual report, as follows:

"36-71-8.

(a) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in one or more interest-bearing accounts. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned and shall be subject to all restrictions placed on the use of development impact fees under the provisions of this chapter. The accounting records shall include the following information:

(1) The accounting records to be maintained shall specify the address of each property which paid development impact fees, the amount of fees paid in each category in which fees were collected, and the date that such fees were paid; and

(2) As to any exemptions granted, the accounting records to be maintained shall specify the address of each property for which exemptions were granted, the reason for which such exemption was granted, and the revenue source from which the exempt development's proportionate share of the system improvements is to be paid.

(b) Expenditures of development impact fees shall be made only for the category of system improvements and in the service area for which the development impact fee was imposed as shown by the capital ~~improvement~~ improvements element and as authorized by this chapter. Development impact fees shall not be used to pay for any purpose that does not involve system improvements that create additional service available to serve new growth and development.

(c)(1) Development impact fees, collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways, shall be expended to fund, in whole or in part, system improvement projects:

(A) That have been identified in the capital improvements element of the municipality's or county's comprehensive development plan; and

(B) That are prioritized by proximity to areas which have generated development impact fees, collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways, and which provide the largest improvement in level of service for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways.

(2) Where the expenditure of development impact fees paid by a development is allocated to system improvements in the general area of such development, through an agreement between the municipality or county and the fee payor and such agreement is approved by

the governing body, the analysis required by paragraph (1) of this subsection shall not be applicable.

(d) As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any development impact fees collected, encumbered, and used during the preceding year by category of public facility and service area."

# **SECTION 5.**

This Act shall become effective on July 1, 2007.

# **SECTION 6.**

All laws and parts of laws in conflict with this Act are repealed.